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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 JANE DOE,

4 Plaintiff,

5 v.

18 Cv. 2511 (GHW)

6 CANON U.S.A., INC.,

7 Defendant.

8 -----x

9 April 6, 2018  
2:15 p.m.

10 Before:

11 HON. GREGORY H. WOODS

12 District Judge

13 APPEARANCES

14 BERKE-WEISS LAW PLLC  
15 Attorneys for Plaintiff  
16 BY: LAURIE BERKE-WEISS  
ALEXANDRA T. BERKE  
17 ROSA ALIBERTI

18 DORSEY & WHITNEY LLP  
Attorneys for Defendant  
19 BY: AMANDA M. PRENTICE  
MELISSA RAPHAN  
20 JOHN T. SULLIVAN

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(In chambers; phone conference)

THE COURT: This is Judge Woods. Do I have counsel for plaintiff on the line?

MS. BERKE-WEISS: Good afternoon, your Honor. This is Laurie Berke-Weiss, and I am here with my associates, Alex Berke and Rosa Aliberti.

THE COURT: Do I have counsel for defendant on the line?

MS. PRENTICE: Yes, your Honor. This is Amanda Prentice from Dorsey & Whitney. And on the line is also Melissa Raphan and Jack Sullivan, from our Minnesota office, and they have pro hac vice motions that are pending before your Honor, and I am just asking permission that they participate on this call.

THE COURT: I will permit them to participate in this call, understanding that they have pro hac motions currently pending.

I scheduled this conference to discuss the plaintiff's motion to proceed anonymously in the case. I have reviewed the initial letter with respect to this issue. I have also reviewed the supplemental briefing that I requested from plaintiff as well as the opposition presented by defendant.

I would like to give you the opportunity, if you wish, to provide additional argument on the point before I make a decision on the question.

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1 First, let me hear from counsel for plaintiff. Is  
2 there any argument that you would like to present to supplement  
3 your written submissions to the Court?

4 MS. BERKE-WEISS: Yes, your Honor. Thank you.

5 May it please the Court, we believe that applying the  
6 factors laid out by the Second Circuit in *Sealed Plaintiff v.*  
7 *Sealed Defendant* to the facts as pled should permit plaintiff  
8 to proceed with the case as Jane Doe.

9 Before I add to my arguments, I just want to address  
10 the redaction defect that was pointed out by defendant. We  
11 appreciate defendant's counsel bringing this matter to our  
12 attention. Unfortunately, your Honor, we used a software which  
13 did not permanently redact the selected material. But similar  
14 to the finding in *Doe v. University of St. Thomas*, the  
15 technical glitch should not lose our argument for an anonymous  
16 filing. There is no evidence that anyone other than  
17 defendant's counsel attempted to delete our redactions. In any  
18 event, the information that we attempted to redact, which was  
19 the plaintiff's name, her address, and the name of certain of  
20 defendant's employees is all information that defendant had  
21 before the action was filed, and that information has been  
22 available to it and will continue to be available to it.

23 In short, your Honor, plaintiff should not be punished  
24 for our error. And if the Court grants this motion, we would  
25 ask that the clerk be directed to remove the complaint posted

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1 on ECF -- pardon me, to remove just the exhibits to the  
2 complaint that are posted, and to permit us to file in its  
3 stead properly redacted exhibits which are identical in all  
4 other respects to the current exhibits.

5           Going to the merits, we believe it's self-evident that  
6 the litigation involves matters that are highly sensitive and  
7 of a personal nature. The complaint, which expands on the  
8 plaintiff's sworn charge filed with the EEOC, provides  
9 sufficient detail about the truly vile sexual harassment which  
10 she suffered, as well as its continuing impact on her mental  
11 and emotional health.

12           Similarly, as required by the second factor, it is  
13 self-evident that proceeding under her own name will exacerbate  
14 the mental harm to her. She has been diagnosed, as we said in  
15 our papers, with PTSD and depression. As well as to her  
16 teenage son, who stands to be exposed to ridicule and bullying  
17 by others because of the unwanted sexual harassment suffered by  
18 his mother. The fact is that while the plaintiff's former  
19 colleagues will be able to identify the plaintiff through  
20 details that we have provided in the complaint, members of her  
21 community, who know her as a wife, mother and businesswoman, do  
22 not know about the facts and circumstances of this case. To  
23 them, this matter is completely invisible.

24           But if she is compelled to sue under her own name,  
25 personal and business acquaintances will be able to learn all

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1 the salacious details which comprise this case simply by  
2 Googling her name on the Internet. There will be no need to  
3 follow the road map that defendants have offered. Her name  
4 will grant ready access to all the details. There will be no  
5 way to keep the matter out of the public eye, and this will  
6 further harm her mental health because she will have to deal  
7 with it in her direct and indirect dealings with members of her  
8 community. And she will also have to deal with the fact that  
9 her son could be, and most likely will be, the subject of  
10 gossip, ridicule, and bullying because of what happened to her.

11 At the same time, there is no prejudice to defendant  
12 by allowing plaintiff to proceed as Jane Doe. Canon knows who  
13 she is. They have had access to the facts alleged for the last  
14 year and a half. They have interviewed her, gone to mediation  
15 with her at the EEOC. There was an effort from the first time  
16 this matter was brought to Canon's attention in November of  
17 2016 to be transparent and forthcoming. Plus, even if  
18 anonymity is granted now, the Court is free to compel plaintiff  
19 to proceed to trial under her own name, so as not to prejudice  
20 defendant at trial. This is similar to the decision that was  
21 issued by Judge Engelmayer in *Doe v. Delta Airlines*.

22 Similarly, there is no overarching public interest in  
23 disclosing plaintiff's name. She is a private person, with no  
24 public profile, and she just wishes to be protected against the  
25 disclosure of private, intimate details that are included in

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1 the complaint. The public interest is in the facts of the  
2 case, and they will remain fully available by ECF.

3 Thank you, your Honor.

4 THE COURT: Thank you.

5 Counsel for defendant.

6 MS. RAPHAN: Yes, your Honor. This is Melissa Raphan,  
7 and I appreciate you letting me participate in the argument  
8 today.

9 So on behalf of Canon, your Honor, plaintiff is really  
10 seeking a very extraordinary remedy here. Extraordinary is the  
11 word that every one of these cases uses to describe a departure  
12 from the requirements of Rule 10, and it is extraordinary in my  
13 experience. I have been handling these cases for 30 years, and  
14 I have never had a plaintiff ask to proceed pseudonymously.

15 It is also extraordinary that a request is being made  
16 on this record in which there is an absence of particularized  
17 information and plaintiff's counsel has taken steps to  
18 publicize the case. She has attracted publicity by talking to  
19 Bloomberg and getting cited, posting the complaint on the law  
20 firm's blog and Web site, and identifying plaintiff through  
21 unique identifying information in the complaint.

22 Plaintiff has failed to make any showing as to why the  
23 relief sought should be allowed. In addition, her request has  
24 been made moot by plaintiff's counsel's conduct. And the  
25 redaction issue aside, and the fact that she says we don't know

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1 if anyone has sought it, the point is she has been out there in  
2 the public for the amount of time that the complaint has been  
3 on file, and certainly the public has had access to it.

4 Plaintiff's complaint is 52 pages, and it breaks down  
5 into 32 pages and 220 paragraphs of allegations, the bulk of  
6 which are completely irrelevant to her claim and need not be in  
7 her complaint. And I point this out because when she talks  
8 about the fact that she is private person, the way she has  
9 selected to plead out this complaint has created some of the  
10 issues that she is pointing to now. She has 14 separate counts  
11 of harassment and retaliation, and the first paragraph of her  
12 complaint is essentially the opening paragraph to an opposition  
13 to a motion for summary judgment.

14 So plaintiff is using the complaint to tell her story.  
15 She is going way above and beyond what is required under *Iqbal*  
16 and *Twombly*, and she is including gratuitous information which  
17 has disparaged Canon employees, whose names there is no reason  
18 for them to appear.

19 In addition to including gratuitous information in the  
20 body of the complaint, she included gratuitous materials which  
21 need not have been included and which she doesn't need to seek  
22 her relief. She included the investigative report and she  
23 included text messages. And I believe that counsel herself  
24 used the word "salacious" in her brief, and in a sense, she has  
25 created these salacious allegations that she includes in the

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1 complaint. In addition, she has identified -- the redaction  
2 issue aside -- paragraph 27 and 28, with 42 keystrokes in  
3 total, telling you who she is.

4 None of the cases on which she relies has any fact  
5 pattern even close to this, and plaintiff's counsel's conduct  
6 in publicizing the complaint, and the way she has pled the  
7 complaint out, which tell the public who she is, eliminate any  
8 arguable need to allow her to proceed anonymously.

9 As it relates to the cases, she hasn't cited a single  
10 case which would support allowing her to proceed as she has  
11 requested here. And I think the *Sealed Plaintiff* case makes  
12 very clear that the headline for the court is whether her  
13 interest in anonymity, when balanced against both the public  
14 interest in disclosure and prejudice to defendants, is  
15 outweighed. And the answer in this case is no.

16 The case that she relies most heavily on, *Doe v.*  
17 *Kolko*, simply doesn't apply. And I would like to point out --  
18 I don't think we addressed this in our brief -- that in  
19 addition to the fact that this case does not involve a sexual  
20 assault on a child, and we don't have a plaintiff's affidavit  
21 noting that community members had actually threatened  
22 retaliation if she proceeded, the court actually pointed out on  
23 page 6 of the opinion that the court's discomfort at allowing  
24 the plaintiff on those unique facts in that case was lessened  
25 by the fact that there were two other plaintiffs who had



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1 disclosed their names, so that there were plaintiffs proceeding  
2 publicly against the defendant in that case.

3 I think this case is much closer to *Doe v. Del Rio*,  
4 which we cite on page 7 of our brief, in which the plaintiff's  
5 anonymity had been compromised, and the court found that  
6 concealing the plaintiff's name could deprive the defendant of  
7 an opportunity that witnesses would come forward with valuable  
8 information about events and credibility of witnesses. The *Del*  
9 *Rio* reasoning on this point is raised in the case of *Doe v.*  
10 *Delta*, in which the court also denied the plaintiff's request  
11 to proceed anonymously. And that reasoning applies here.

12 If we look at the ten factors under which the *Sealed*  
13 *Plaintiff* case directs the Court to consider, I am just going  
14 to run through them quickly because I think it's just important  
15 to understand that they actually, in this case, all weigh in  
16 Canon's favor and against having her proceed anonymously.

17 Factor one, whether the litigation involves matters  
18 that are highly sensitive and of a personal nature, under the  
19 *Doe v. Del Rio* and the other cases we cite, weighs in Canon's  
20 favor.

21 The second factor, whether the identification poses a  
22 risk of retaliatory physical or mental harm, again weighs in  
23 Canon's favor. There has been no actual showing here, your  
24 Honor, no particularized showing that indicates that.

25 Factor three weighs in Canon's favor. This case does

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1 not fit into the *Doe v. Hartford Life* where the injury that the  
2 plaintiff is actually seeking to remedy would be compromised if  
3 the plaintiff had to proceed in a matter that was public.

4 And factors four, five and six weigh in Canon's favor.

5 I want to focus on factor seven. Factor seven is  
6 whether the plaintiff's identity has thus far been kept  
7 confidential, and I think, in addition to what I have already  
8 identified, plaintiff did file an EEOC charge, and to use the  
9 words of the *Corley v. Vance* court, the cat is already out of  
10 the bag.

11 Factor eight, whether the public's interest in the  
12 litigation is furthered, the answer is yes, and that really  
13 goes to the fundamental purpose underlying Rule 10, which is to  
14 have public access to the courts.

15 Canon is prejudiced by having this plaintiff proceed  
16 pseudonymously in this case. The plaintiff has put the case in  
17 text and the investigative report in the limelight. And what  
18 the *Del Rio* and the *Delta* court really talk about is the fact  
19 that having public access and having the plaintiff's name in  
20 the record allows people to come forward and talk about the  
21 events and talk about credibility issues as it relates to  
22 witnesses.

23 As this complaint has been pled out, the plaintiff has  
24 identified a number of instances where she was on trips where  
25 she alleges that inappropriate behavior took place. A number

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1 of people on the trips -- it sounds like a number of them were  
2 trade shows -- they all might have something to say about this  
3 case if the complaint were filed, because they may not be Canon  
4 employees and they may be in a position where they would be in  
5 a position to comment but won't know that the suit is going on  
6 unless it is publicly filed.

7 So in this case, your Honor, in addition to the fact  
8 that she has not even made the particularized showing required,  
9 such that you need never reach the issue of prejudice, there is  
10 prejudice in the way the case has been handled, in the way it  
11 has been pled out, and all ten factors under *Sealed Plaintiff*  
12 weigh in Canon's favor and against having to proceed  
13 anonymously.

14 THE COURT: Thank you very much.

15 Any rebuttal argument from plaintiff?

16 Counsel.

17 MS. BERKE-WEISS: Yes, your Honor. Thank you.

18 I don't know exactly where to start since some of the  
19 descriptions of the case that counsel have given are really not  
20 entirely on point. In fact, I will go back to the *Doe v. Delta*  
21 case. In that case, the plaintiff was allowed to proceed  
22 anonymously until trial. At trial, she wasn't allowed to  
23 proceed anonymously. That's exactly the argument that we have  
24 made.

25 In terms of the Canon investigative report and the

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1 EEOC proceeding, that charge is not public, your Honor. And in  
2 fact, the investigative report, it's worth noting that the EEOC  
3 determined that that report could not be filed confidentially.  
4 That's why it's attached to the complaint. The complaint is  
5 pled as it is because we believe, we know that our client has  
6 suffered significant damages, and the only way that she can  
7 make her case for those damages is if she can plead them in the  
8 complaint.

9 It's really quite astounding to think that a defendant  
10 would object to a well pled complaint. We have given them a  
11 road map to what our case is about. We have done it since day  
12 one, your Honor. And I think that we have really, frankly,  
13 done them a favor because we have given them advance discovery.  
14 We have told them what this case is about. They have  
15 investigated this case up and down. They obviously didn't  
16 believe our client. They didn't think that her claims were as  
17 we see them. They had an opportunity in that investigation to  
18 meet with all of their employees, people who work with my  
19 client, people who went to trade shows, people who traveled  
20 with her. They are all in the same industry that she was in  
21 before she was driven out of it. And these claims, they are  
22 highly sensitive and unusual, and if they didn't do an adequate  
23 investigation over the last year and a half, when they have had  
24 complete access to the facts and key players, then I think it's  
25 a bit like the boy who cried wolf, that they shouldn't be

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1 permitted to say now that they are prejudiced because they  
2 didn't speak to people who may or may not be available to them  
3 or interested in speaking to them, aside from the fact that, by  
4 defendant's own admission, these people in the industry can  
5 figure out who the plaintiff is by hitting 47 keystrokes.

6 I could go on and talk about the case. The *Kolko* case  
7 is cited for a limited purpose, your Honor, and it has been  
8 misapplied by the defendants. Our brief goes into why we cited  
9 it.

10 In terms of whether the Court could use additional  
11 evidence to support our application, first of all, if the Court  
12 asks us to supplement what we have submitted, we would be very  
13 pleased to do that.

14 Second of all, there are cases where anonymity was  
15 granted by the court, by the Southern District -- I will name  
16 the two of them -- and there appears to be no extra evidence  
17 provided other than the complaint that was filed with the  
18 court. One is *Grottano v. City of New York*, and the other is  
19 *Next Phase Distribution*, and in that case, defendants were  
20 given anonymity. They were defendants who allegedly downloaded  
21 pornography. Because of the highly sensitive nature and  
22 privacy issues that could be linked with the downloading of  
23 pornographic files, the court determined that since they did  
24 not know, the court could not discern at the early stage of the  
25 litigation whether the defendants were properly named, they

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1 granted them anonymity.

2 In terms of the unusual application that we have made,  
3 I too have practiced for many decades, your Honor, and this is  
4 the first time I have ever filed seeking a Jane Doe pseudonym  
5 for a plaintiff. I have never done it before. And the fact is  
6 that this is a highly sensitive, unusual case. I have got a  
7 plaintiff who is truly suffering because of her mental health  
8 because of what happened to her, and I would like to see her  
9 get her day in court. I would like to see her avoid any more  
10 harm to her mental health, and at the same time, as I have  
11 said, your Honor, to the mental health and well-being of her  
12 son, who is an innocent party in all of this, but who will be,  
13 of course, exposed to the aftermath of disclosing his mother's  
14 name and exactly what happened to her while she was in Canon's  
15 employ.

16 I rest on my brief and on my argument, and certainly,  
17 your Honor, if you have any questions, I would be pleased to  
18 answer them.

19 THE COURT: Thank you very much.

20 Thank you very much, counsel, for your arguments and  
21 for your submissions to the Court in connection with this  
22 application.

23 I believe I am prepared to rule on the motion to  
24 seal/to proceed under a pseudonym now. Give me a few moments  
25 as I first review the basic law with respect to this issue and

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1 the procedural status of the case. Then I will analyze the  
2 factors under the *Sealed Plaintiff* case, following a brief  
3 overview of certain of the, I will call it, overarching  
4 concerns regarding the application.

5 In order to eliminate the drama, I expect to deny the  
6 request to proceed in this case under seal. I think that it is  
7 an extraordinary request, and I think that the interest of the  
8 public generally in judicial proceedings should not be set  
9 aside lightly, and as I balance the factors, my ultimate  
10 conclusion is that that general principle drives the conclusion  
11 that in order to proceed, Jane Doe must not proceed under that  
12 name but under her true name.

13 First, an overview of where we are procedurally and  
14 with respect to the law as a whole.

15 On March 20, 2018, plaintiff filed this case under the  
16 pseudonym Jane Doe, Docket No. 1, and requested leave to  
17 proceed anonymously, Docket No. 4. That same day, the Court  
18 solicited additional briefing regarding why plaintiff should be  
19 allowed to proceed anonymously, pointing the parties to the  
20 *Sealed Plaintiff* case, Docket No. 5.

21 Just as an aside, I was going to issue an order to  
22 show cause with respect to this issue before I got the letter.

23 In response to the Court's order, on March 28, 2018,  
24 plaintiff filed a motion to proceed anonymously, and on April  
25 4, 2018, defendant filed an opposition. For the reasons that

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1 follow, as I said, plaintiff's motion is denied.

2 Rule 10 of the Federal Rules of Civil Procedure  
3 provides that "the title of the complaint must name all the  
4 parties." This requirement is not a mere formality, but  
5 "serves the vital purpose of facilitating public scrutiny of  
6 judicial proceedings and therefore cannot be set aside light."  
7 *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 188 (2d  
8 Cir. 2008). In considering whether to allow a plaintiff to  
9 file under a pseudonym, the Court must balance "the plaintiff's  
10 interest in anonymity against both the public interest in  
11 disclosure and any prejudice to the defendant." *Id.* at 189.  
12 The Second Circuit has "noted with approval" a list of  
13 non-exhaustive factors that courts should consider when  
14 proceeding with such an inquiry:

15 "(1) whether the litigation involves matters that are  
16 highly sensitive and of a personal nature; (2) whether  
17 identification poses a risk of retaliatory physical or mental  
18 harm to the ... party seeking to proceed anonymously, or even  
19 more critically, to innocent nonparties; (3) whether  
20 identification presents other harms and the likely severity of  
21 those harms, including whether "the injury litigated against  
22 would be incurred as a result of the disclosure of the  
23 plaintiff's identity; (4) whether the plaintiff is particularly  
24 vulnerable to the possible harms of disclosure, particularly in  
25 light of his age; (5) whether the suit is challenging the



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1 actions of the government or that of private parties; (6)  
2 whether the defendant is prejudiced by allowing the plaintiff  
3 to press his claims anonymously, whether the nature of that  
4 prejudice (if any) differs at any particular stage of the  
5 litigation, and whether any prejudice can be mitigated by the  
6 district court; (7) whether the plaintiff's identity has thus  
7 far been kept confidential; (8) whether the public's interest  
8 in the litigation is furthered by requiring the plaintiff to  
9 disclose his identity; (9) whether, because of the purely legal  
10 nature of the issues presented or otherwise, there is an  
11 atypically weak public interest in knowing the litigants'  
12 identities; and (10) whether there are any alternative  
13 mechanisms for protecting the confidentiality of the plaintiff.

14 *Id.* at 190. (citation, internal quotation marks, and  
15 alterations omitted).

16 I am going to go through each of the factors in brief  
17 momentarily. Before that, I am going to highlight certain  
18 relevant considerations before coming back to a weighing of  
19 each of the pertinent factors.

20 First, I want to highlight that the conduct alleged  
21 here -- among other things, sexual harassment -- is, without  
22 question, very sensitive. However, I do note that while  
23 plaintiff seeks to pursue these claims anonymously, she did not  
24 hesitate to identify many other individuals by name in her  
25 complaint. Indeed, plaintiff identified her alleged harasser

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1 in the third sentence of her complaint, complaint at paragraph  
2 1, and also promptly publicized the case, alternately  
3 explicitly naming the alleged harasser in the press in one  
4 instance, and in another providing a hyperlink to the  
5 complaint, which conspicuously names him. Declaration of  
6 Amanda M. Prentice, Exhibits A and B. Plaintiff did choose to  
7 protect the identities of some individuals, e.g., complaint,  
8 Exhibit B at 2, but revealed the names of many others, e.g.,  
9 complaint paragraphs 37 and 158. Plaintiff here is requesting  
10 that she be permitted to proceed pseudonymously because of the  
11 salacious nature of the underlying events, but does not afford  
12 the alleged harassers the same treatment.

13 Further, as defendant highlighted in its opposition,  
14 plaintiff identified several details in her complaint that make  
15 her easily identifiable. I will come back to these momentarily  
16 as I assess the seventh *Sealed Plaintiff* factor. But the last  
17 overarching point that I would like to raise is the simple fact  
18 that, as both counsel here have recognized, hundreds, or I  
19 should say many, of unique, often sensitive employment  
20 discrimination cases are filed in this and other districts of  
21 this country every year, and very few are allowed to proceed  
22 anonymously. See, for example, defendant's opposition, Docket  
23 No. 10, at 7-8. So I rate this request as somewhat  
24 extraordinary in light of the broad preference for the public  
25 conduct of litigation that's articulated by the circuit in the

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1     *Sealed Plaintiff* case.

2             I am going to review in brief some of the *Sealed*  
3     *Plaintiff* factors. As I will conclude, having weighed these  
4     factors in the aggregate against the public interest in  
5     disclosure and prejudice to the defendant, my ultimate  
6     conclusion is that the plaintiff should not be allowed to  
7     proceed anonymously.

8             With respect to the first factor, there is no question  
9     that this litigation involves matters that are highly sensitive  
10    and of a personal nature. I do not underestimate that factor  
11    and provide it with significant weight.

12            With respect to factor two, I have no specific  
13    information that suggests retaliatory physical or mental harm  
14    to Jane Doe. There is no such evidence before me or  
15    allegations before me. So I do not weigh this factor highly.

16            Factor three asks whether there are other harms  
17    associated with identification and the severity of those harms.  
18    And I recognize the other harms that plaintiff has suggested  
19    here, including the reputational harm to her potentially as a  
20    result of the disclosure of this information, and I do not  
21    minimize those potential harms, particularly given the fact  
22    that, as asserted by plaintiff, she suffers from PTSD. I also  
23    recognize the asserted harm with respect to her child who, it  
24    is asserted, could be mocked as a result of the disclosure of  
25    this information regarding his mother in a more public manner.

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1           With respect to this factor, I do believe that it is  
2 somewhat informed by the arguments raised by defendants. The  
3 complaint is extremely detailed and goes well beyond Rule 8's  
4 requirement for a complaint, and then has been used in what I  
5 believe the defendants essentially argue as an offensive -- in  
6 the sense of offense versus a defense -- manner. The fact that  
7 other harms may occur as a result of the disclosure of this  
8 complaint are, in part, a creature of plaintiff's making. I do  
9 accept the arguments by defendant that by including such  
10 salacious arguments and references to the plaintiff's child in  
11 these submissions, some of this problem is one of her own  
12 making in the way that the case has been framed and  
13 affirmatively publicized. And so while I recognize the  
14 potential harms, I also discount that somewhat as a result of  
15 the fact that the case has been presented in a way that appears  
16 to be intended to present tactical benefits for plaintiff, and  
17 as a result, I reduce the weight accorded to that factor.

18           With respect to factor four, namely, whether the  
19 plaintiff is particularly vulnerable to the possible harms of  
20 disclosure, I don't understand her to be particularly  
21 vulnerable to the harms of disclosure. I understand the PTSD  
22 issue that was otherwise mentioned. I also, however,  
23 understand that she is a successful businesswoman and that,  
24 through her counsel, she has been advertising the existence of  
25 this litigation.

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1 I understand, with respect to the age issue, that she  
2 is not a minor or otherwise of a fragile age. Her child is  
3 younger. Again, however, this factor does not ask me to look  
4 particularly to the family members of the plaintiff, but rather  
5 to the plaintiff herself. I have assessed the potential risk  
6 of the child being treated badly as a result of the disclosure  
7 of this fact as part of my assessment of the third factor.

8 With respect to the fifth factor, this case is  
9 challenging the action of a private party and, therefore, I  
10 believe weighs in favor of disclosure. I believe that the  
11 defendant is prejudiced by allowing the plaintiff to press her  
12 claims anonymously, and I have evaluated to what extent this  
13 fact differs at this early stage in the litigation and whether  
14 the prejudice could be mitigated by me in some other way. I  
15 accept the proffer by the defendant regarding the impact of the  
16 anonymous complaint on their ability to investigate the claims  
17 here. I don't have information beyond the argument by counsel  
18 for plaintiff that defendant's argument is inept.

19 But, moreover, I look again to the affirmative conduct  
20 by plaintiff in affirmatively publicizing this complaint. It  
21 appears that the plaintiff has used as a tactical matter a  
22 salaciously crafted complaint in order to tar the defendant and  
23 the named identified individuals in the complaint. There is  
24 prejudice to defendant from that fact as well as from the fact  
25 that proceeding anonymously may impact their ability to

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1 investigate the case.

2 I have considered whether or not disclosure could be  
3 delayed. Given the factors that I just described, I don't  
4 believe it's appropriate to defer disclosure to a later stage  
5 in the litigation.

6 With respect to point seven, plaintiff's identity has  
7 not been kept completely confidential to this date. As I  
8 understand it, there is an EEO charge. Therefore, requiring if  
9 not the publicity of her identity, it has been made a matter of  
10 public record. I do not fault plaintiff significantly for the  
11 technical glitch. I will say that it's evident on ECF, I  
12 noticed it in just reading through the complaint when the case  
13 came in, but I don't hold that strongly against the plaintiff.  
14 However, plaintiff's decision to include very detailed  
15 information about her, through which it can be determined her  
16 identity, weighs against plaintiff in this instance. If  
17 plaintiff was seeking desperately to maintain the  
18 confidentiality of her identity, the details provided in the  
19 complaint need not have been so clearly pleaded by presenting  
20 all of those specific details, which it is not apparent to me  
21 are necessary to defeat a motion to dismiss. I believe that  
22 plaintiff has undermined the argument that her identity should  
23 be kept confidential.

24 With respect to point eight, I weigh this factor very  
25 highly in favor of disclosure. That is because I believe that,

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1 as a general matter, there is a strong public interest in legal  
2 proceedings occurring in the open. This is not the Star  
3 Chamber. There are great benefits to requiring parties to  
4 litigate their cases in the open, and there is a presumption,  
5 indeed, of public access to judicial documents, and no document  
6 is more critical in that regard than the case-initiating  
7 document like this, the complaint. So I weigh very highly the  
8 public interest in any litigation, this one included.

9 Now, with respect to whether or not this particular  
10 case is of great public interest, again, I am informed in part  
11 by the conduct of plaintiff and her counsel who have publicized  
12 this litigation, which suggests to me that plaintiff believes  
13 that there is some public interest in the subject of this  
14 litigation, which from my perspective undermines an argument  
15 that the public is disinterested in this litigation or that the  
16 public should not be permitted to know the identity of the  
17 litigants here.

18 With respect to point ten in the *Sealed Plaintiff*  
19 case, I have considered whether there are alternative  
20 mechanisms for protecting the confidentiality of the plaintiff,  
21 but on balance, reviewing all of the factors as a whole, I  
22 don't believe that plaintiff is entitled to that protection.  
23 Instead, I believe that the interest of the public and cases  
24 generally, and this case which has been affirmatively  
25 publicized by the plaintiff in particular, overcomes her

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1 interest in proceeding anonymously.

2 So having balanced the interests of the plaintiff, the  
3 defendant, and the public, I believe that the relevant factors  
4 weigh against permitting plaintiff to proceed anonymously in  
5 this case. "The people have a right to know who is using their  
6 courts." *Sealed Plaintiff*, 537 F.3d at 189 (quoting *Doe v.*  
7 *Blue Cross & Blue Shield United*, 112 F.3d 869, 872 (7th Cir.  
8 1997)). As a result, assuming that this case will be  
9 proceeding here, the plaintiff is directed to refile her  
10 complaint under her own name, without redactions.

11 I am going to direct that the complaint be filed with  
12 those unredacted documents no later than April 10, and I will  
13 issue a separate order denying the letter motion and its  
14 request to proceed anonymously. That order will refer to the  
15 transcript of today's proceedings for the basis for the  
16 decision, and it will set forth the deadline for the plaintiff  
17 to file the complaint identifying her and the unredacted  
18 versions of the attachments by April 10.

19 Good. Is there anything else that we should discuss  
20 in this conference?

21 Let me say I expect to be scheduling an initial  
22 pretrial conference in the case. I will try to do so in  
23 relatively short order, as I understand that the parties are  
24 focused on this. I hope to issue an order scheduling the  
25 initial pretrial conference shortly, and so you can expect that



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1 on the docket.

2 Anything else before we adjourn?

3 Counsel for plaintiff.

4 MS. BERKE-WEISS: Yes, your Honor. In filing the  
5 unredacted documents in our client's true name, may we continue  
6 to redact, and properly redact, her address and the names of  
7 the employees who were redacted initially in the investigation  
8 report?

9 THE COURT: Thank you.

10 Please refer to my individual rules with respect to  
11 redaction requests. It will provide you some feedback about  
12 how to request such limited redactions. You should also look  
13 to the civil rules which provide redactions that are  
14 presumptively permitted. I don't know the answer to the second  
15 of your two specific questions. I don't know whether, in fact,  
16 you have a copy of the report that does not contain the  
17 redactions.

18 MS. BERKE-WEISS: We do, your Honor.

19 THE COURT: Thank you.

20 To the extent you're planning to file something that  
21 another organization has already determined to be appropriate  
22 for redaction, I don't expect that I would question that at the  
23 outset, but you should follow my individual rules and I will  
24 evaluate that. I think, though, that my guidance will be that  
25 I expect not to require you to file that attachment in an

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1 unredacted form because I understand that a version of that  
2 report that was initially provided to you is itself redacted.  
3 I provide you with that guidance, but it's subject to  
4 reconsideration in the event that there is further information  
5 that I need to take into account in evaluating it.

6 MS. BERKE-WEISS: Just to be clear, the report that we  
7 are referring to was obtained by us in an unredacted form.

8 THE COURT: Thank you very much. In which case I am  
9 not sure that I would permit it to be redacted. To the extent  
10 that redactions are desired, or desirable, please write me, in  
11 accordance with the terms of the individual rule that applies,  
12 and I will decide.

13 MS. BERKE-WEISS: Thank you, your Honor.

14 THE COURT: Thank you.

15 Anything else on behalf of defendant?

16 MS. RAPHAN: No, your Honor. Thank you.

17 THE COURT: Thank you, all.

18 (Adjourned)  
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